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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 300

GEORGE SAM ALOISIO AND WILLIAM ALOISIO,
PETITIONERS

v.

UNITED STATES OF AMERICA

No. 331

FRANK JOHN CERONE, PETITIONER

v.

UNITED STATES OF AMERICA

No. 332

JAMES SAMUEL CERONE AND FRANK JOHN CERONE,
PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The appeals in these cases were heard together and were disposed of in one opinion in the circuit court of appeals (No. 300, R. 219-225; No. 331, R.

208-215; No. 332, R. 84-91), which is not yet reported.

JURISDICTION

The judgments of the circuit court of appeals were entered June 30, 1945 (No. 300, R. 225; No. 331, R. 214; No. 332, R. 90), and petitions for rehearing were denied July 23, 1945 (No. 300, R. 231; No. 331, R. 215; No. 332, R. 91). The petition for a writ of certiorari in No. 300 was filed August 6 and the petitions in Nos. 331 and 332 were filed August 17, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether petitioners are relieved from criminal liability for evading and aiding and abetting evasion of service in the armed forces by reason of the fact that certain of the personnel of the United States Navy who were acting as informers performed acts which contributed to the rejection for service of petitioners James Cerone and George Sam Aloisio.

STATUTE INVOLVED

Section 11 of the Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, 894-895, 50 U. S. C. App. 311, provides in part as follows:

* * * any person * * * who
* * * evades registration or service in

the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, * * * shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment, * * *.

STATEMENT

On June 30, 1944, two indictments were returned in the District Court of the United States for the Northern District of Illinois, one against petitioners George Sam Aloisio, William Aloisio and Frank John Cerone, and the other against petitioners James Cerone and Frank John Cerone. Both indictments charged violations of Section 11 of the Selective Training and Service Act and, except for the dates and defendants, were practically identical. The indictment against James and Frank Cerone charged that James evaded service in the military forces and that Frank aided and abetted him in this evasion by corrupting certain naval personnel assigned to the induction center at Chicago to make false and fraudulent entries on the record of examination of James, thereby causing James to be rejected for service (No. 332, R. 2-4). The second indictment charged George

Aloisio with evasion of service and William Aloisio and Frank Cerone with aiding and abetting his evasion (No. 300, R. 2-4; No. 331, R. 2-4).

In separate jury trials under these indictments (No. 300, R. 16; No. 332, R. 10) petitioners were each convicted (No. 300, R. 162; No. 332, R. 56). James Cerone, George Aloisio, and William Aloisio were each sentenced to five years' imprisonment and Frank Cerone was sentenced to five years' imprisonment and to pay a fine of \$10,000 in each case, the sentences to run consecutively (No. 300, R. 165, 184-185; No. 332, R. 56-57, 70-71). Upon separate appeals by George and William Aloisio (No. 300, R. 186), Frank and James Cerone (No. 332, R. 72), and Frank Cerone (No. 331, R. 191-192), respectively, which were consolidated and disposed of in a single opinion, the judgments were affirmed by the Circuit Court of Appeals for the Seventh Circuit (No. 300, R. 225; No. 331, R. 214; No. 332, R. 90).

The evidence adduced at the trials is of the same nature and may be summarized as follows:

In the early part of March 1944, Chief Petty Officer Albert Stephenson, who was assigned to the induction station at Chicago, was introduced to petitioner Frank Cerone, who asked him whether he could help in keeping "some of the boys" from being inducted into the armed forces. Several days later Cerone again met Stephenson

and offered to reward him if he could devise a plan whereby some of Cerone's friends would be rejected for military service. Thereafter Stephenson and Cerone discussed a plan through which rejections would be effected by marking the registrant's record of examination, or "buck sheet," with a stamp indicating that he was a psychoneurotic. On March 16, 1944, Stephenson effected the rejection of one of Cerone's friends and received in return \$1,000 from Cerone. Later Cerone suggested that the plan was a little slipshod and that a better method should be adopted. (No. 300, R. 42-45; No. 331, R. 42-45; No. 332, R. 16-17.)

Thereafter Stephenson sought to enlist the assistance of Chief Petty Officer John Philip Curran, who was also assigned to the induction center, in the plan to secure rejections for certain registrants. Curran said he would think it over. The next day Curran reported the matter to his commanding officer and on April 3, 1944, he disclosed Stephenson's proposition to Naval Intelligence officers and Special Agents of the Federal Bureau of Investigation. Curran was directed to resume his duties and to take orders from Special Agent Logue, who instructed him to "go along" with any requests which Stephenson might make. Thereafter Stephenson went to Curran's office and a scheme was devised whereby the registrant was to drop out of the examining line at a certain point, hide his papers inside his shirt, and proceed

to Curran's office, where Curran would mark his papers so as to indicate that he was psychotic and would stamp them "Rejected by the Armed Forces." From there the registrant was to return to the line as a reject. (No. 300, R. 45, 59-62, 71-74, 92, 98; No. 331, R. 45, 59-62, 71-74, 92, 98; No. 332, R. 17, 35-37, 43.)

About April 13, 1944, this plan was put into effect and operated successfully to secure the rejection of one George Nick Alex, for which \$1,000 was paid to Stephenson by Frank Cerone (No. 332, R. 18, 24, 36).

On April 23rd Stephenson was taken to the Federal Bureau of Investigation headquarters, where he was advised that both the Bureau and Naval Intelligence knew exactly what had happened in the case of Alex. Stephenson gave a signed statement to the Bureau, and was told to continue with the plan and to report his activities to the Bureau. He was instructed not to communicate with Frank Cerone or frequent places where he was accustomed to meet him and to do nothing until he received word from Cerone. While he was not to take the initiative in making any contact with Cerone, Stephenson was instructed to do anything that Cerone requested him to do. (No. 300, R. 47, 63-65, 67-68, 93; No. 331, R. 47, 63-65, 67-68; No. 332, R. 24-25, 42, 44.)

On May 10, 1944, in response to a telephone call from Frank Cerone, Stephenson met him and William Aloisio at a hotel. Cerone pro-

posed that Stephenson secure the rejection of the younger brother of William Aloisio in return for \$500; Stephenson advised them that he would have to discuss the matter with Curran. Willam Aloisio showed Stephenson the notice to George Aloisio to appear for examination and arrangements were made to meet the following day at a tavern. Pursuant to this arrangement, Cerone, George Aloisio, Curran, and Stephenson met at the tavern and discussed a plan of effecting George's rejection. Curran took George across the street to the induction center, where he explained the plan and rehearsed George in its details. Upon returning to the tavern Cerone told George, "You just follow instructions tomorrow. Everything will be all right." (No. 300, R. 47-52, 75-78.)

On May 12, 1944, George Aloisio reported to the induction center, dropped out of the line and appeared at Curran's office, where he gave his papers to Curran, who made certain notations on the "buck sheet" and stamped it, "Rejected by the Armed Forces." Thereafter George Aloisio was rejected for service and came back to Curran's office to advise him of that fact and to thank him. On the same day Frank Cerone paid Stephenson \$500 for effecting this rejection. (No. 300, R. 52-55, 78-79, 108-113; No. 331, R. 52-55, 78-79, 108-113.)

On May 22, 1944, upon receiving another call from Frank Cerone, Stephenson met Cerone and

was told that Cerone's brother James was to come up for pre-induction physical examination on May 24th and that Frank would pay Stephenson \$500 to secure the rejection of James. The next day Frank and James Cerone, Curran, and Stephenson met at a tavern and discussed the procedure which James was to follow. The plan of having James fraudulently rejected for psychiatric reasons was discussed with James, who assured Stephenson that since he had not been examined by the psychiatric unit on a previous trip to the induction station, the plan could be safely followed. Frank Cerone told James that under no circumstances was he to identify either Stephenson or Curran in the event he should be questioned regarding his rejection. Curran told James that when he reported to the induction station the following morning he should stay in the line to a certain point, where he was to fall out and report to Curran's office, at which place his papers would be altered (No. 332, R. 18, 35-36). This procedure was followed on May 24, when James reported at the induction station, and he was accordingly rejected. Thereafter, Frank Cerone paid Stephenson \$500 for effecting James' rejection. (No. 332, R. 19, 32, 36-37, 47.)

In each case the trial judge instructed the jury, *inter alia*, that "if you find from the evidence in this case that the defendants, or either of them,

had not conceived the intention of committing this offense, but committed it as a result of the suggestions and lures of the Government officers, that the offense originated in the mind of the Government officers and not of the defendants, and that the Government officers lured these defendants on for the purpose of entrapping, arresting and prosecuting them, then you shall find the defendants not guilty" (No. 300, R. 158; No. 331, R. 158; No. 332, R. 54).

ARGUMENT

Petitioners George and William Aloisio contend (No. 300, Pet. 13-16) that the actions of Chief Petty Officers Stephenson and Curran, who were acting pursuant to the directions of special agents of the Federal Bureau of Investigation, constitute entrapment. The contention wholly ignores the uncontradicted evidence that petitioner Frank Cerone first solicited these officers to obtain a rejection for James Cerone in return for \$500, and that petitioners Frank Cerone and William Aloisio first approached them to secure a rejection for George Aloisio. In each instance it was petitioners who first broached the commission of the crime and asked assistance in carrying it out. Nor are petitioners James Cerone and George Aloisio relieved by the fact that inside assistance was procured for them by their brothers, since the night before each was to report for

induction, James Cerone and George Aloisio met with Frank Cerone and the two government informers for the purpose of being instructed in the means by which they could obtain a rejection by the armed forces.

Under these circumstances it is clear that the genesis of the idea, the real origin of the criminal intent, sprang from the minds of petitioners in each instance, and that, far from being induced or lured into the commission of the offense by the informers, petitioners enlisted the assistance of Stephenson and Curran. The defense of entrapment is applicable only where the government agents instigate the crime and is not available where they merely allow "the crime already conceived to be carried out sufficiently to obtain evidence necessary for a conviction of the crime." *Farber v. United States*, 114 F. 2d 5, 10 (C. C. A. 9), certiorari denied, 311 U. S. 706. See also *United States v. Lindenefeld*, 142 F. 2d 829, 831 (C. C. A. 2), certiorari denied, 323 U. S. 761, and cases cited; *Weathers v. United States*, 126 F. 2d 118, 119 (C. C. A. 5), certiorari denied, 316 U. S. 681.

Nor is there any merit in the petitioners' argument (No. 300, Pet. 17-18; No. 331, Pet. 9-12; No. 332, Pet. 9-12) that the government agents themselves performed acts which were essential elements of the offenses charged and which are not imputable to petitioners. The crucial act in each

case was, of course, the evasion of service by fraudulently causing James Cerone and George Aloisio to be rejected by the armed forces. When the feigned accomplices Curran and Stephenson obtained the necessary stamps and, upon the solicitation of petitioners, agreed to stamp James Cerone's and George Aloisio's examination sheets, "Rejected by the Armed Forces," and to make false entries of psychiatric disorders thereon, they were, as the court below stated (No. 300, R. 224), at most affording facilities for the petitioners to carry out their preconceived criminal design. James Cerone and George Aloisio, aided and abetted by Frank Cerone and William Aloisio, utilized that opportunity by presenting themselves at Curran's office at the induction center for the purpose of having their papers fraudulently altered and stamped and thus securing the desired rejection. Hence, in order to sustain petitioner's convictions, it is not necessary to impute to them the acts of the government agents, who merely feigned the parts of accomplices. Petitioners' own acts constituted the commission of the crimes for which they stand convicted.

These cases do not differ essentially from others in which government agents, acting as or through decoys, furnish the means whereby suspected persons commit offenses which they themselves have conceived. In such circumstances there is no entrapment. See *United States v. Lindenfeld, supra*.

Sorrells v. United States, 287 U. S. 435, upon which petitioners rely, is not to the contrary, for this Court expressly recognized that officers or employees of the Government may afford opportunities or facilities for the commission of an offense, using artifice and stratagem to catch those engaged in criminal enterprises, without defeating a prosecution (see pp. 441, 445, 453-454). Hence there is no conflict between the decision of the circuit court of appeals and the principles announced by this Court in the *Sorrells* case.

The most that can be said for petitioners' argument is that the issue of entrapment was a question of fact for the juries' determination, under proper instructions. *Sorrells v. United States*, 287 U. S. 435. In each case the trial judge correctly instructed the jury as to the law of entrapment and charged that if they should find that the defendants had not conceived the intention of committing the offense but had been lured into doing so by the government agents, a verdict of not guilty should be returned (No. 300, R. 158; No. 331, R. 158; No. 332, R. 54). The juries resolved this issue against petitioners and since the verdicts have been left undisturbed by two courts, there is no occasion for further review by this Court. *United States v. Johnson*, 319 U. S. 503, 518; *Delaney v. United States*, 263 U. S. 586, 590.

CONCLUSION

The decision below is correct and no conflict of decisions is involved. We therefore respectfully submit that the petitions for writs of certiorari should be denied.

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